DRN-4583803

The complaint

Mrs M complains about advice from the Skipton Building Society (Skipton).

What happened

Mrs M said that in 2017 she was given advice by Skipton to contribute to her employer's additional voluntary contribution pension (AVC pension). She said she lost out on lump sum benefits from her public sector pension as her lump sum has instead been taken from her AVC. This was not properly explained to her at the time. She said she was misled. She said she was told she would be able to take the AVC tax free and it was in isolation from her main pension. It also meant that her total pension was now higher and she would have to pay tax on it. The original reason to invest was to recover tax that had been paid on a lump sum from cashing in a pension belonging to her husband and on which he had paid some tax. But using the AVC they would get tax relief on the contributions and in effect claim back the tax paid on her husband's pension over time. But the end result was that she was paying tax on income. She took her pension and the AVC as a lump sum in December 2022. She said she never wanted a bigger pension. If she died tomorrow she would have lost the money. Had it been explained she would have put the money in an ISA which would have been in addition to her pension. She didn't think she was in a better position as a result of the advice. She wanted a refund of the cost of the advice which she said was £679.56.

Skipton said it didn't think there had been an error. Mrs M had selected the option of making contributions to her employer's AVC and then taking the maximum available tax-free pension commencement lump sum once she reached retirement. The report said that

'When you come to draw benefits from your defined benefit scheme, the value of your AVC can be used towards providing a tax-free lump sum. This avoids the need to commute your valuable secure income from your defined benefit scheme to take advantage of your tax free PCLS, this effectively means that the AVC value can receive tax relief on entry and be withdrawn potentially tax free"

It said Mrs M was provided with sufficient information at the time. The result of the AVC contributions was that she could take it without tax. In effect she received tax relief when she made the contributions. Typically when taking money from an AVC only 25% is tax free with the rest as income subject to tax. In her case the AVC money was used towards the maximum tax-free cash without reducing her pension from the employer's pension scheme, in effect the AVC money was then paid out tax free but with a tax uplift on the contributions paid in. She effectively saved more into the AVC than she would have into an ISA. The advice report was clear that the AVC benefits would be used toward the Pension commencement lump sum (PCLS) to avoid commuting pension.

My provisional decision.

I issued a provisional decision. I said there were a number of issues to consider relating to the two pensions Mrs M took out following advice from Skipton. She had made lengthy comments. I had not responded in detail to everything she had said, as I believed the important issues were covered in my proposed conclusions below. In summary I said the following.

Lump sum invested into a new pension

Mrs M complained that she can't take this pension without paying tax. Skipton commented that the report didn't say that she won't pay tax. I agreed that the report didn't say that and Mrs M didn't dispute this. She instead said this was mentioned by the branch manager and this enticed her to take out the pension.

As there was no record of the conversation it wasn't possible to be certain what was said by the manager at that time. However even if he did say it was possible to take pension without tax or that is what Mrs M understood, there were then detailed meetings and a report which made clear that was not the case. She took out the pension after those discussions. So even if such a comment was made I thought Mrs M was provided with all the information she needed to understand the tax treatment of the new pension she decided to take out in the light of the advice from Skipton.

AVC pension

It seemed that in discussing the lump sum pension investment other options were considered and discounted. These included a Stakeholder pension, workplace pension scheme, Additional Pension (within her employers final salary scheme) and AVC contributions and Life styling. While I couldn't be certain, it seemed that investigating the AVC option created an additional opportunity that was then presented to Mrs M to consider and use her remaining net relevant earnings in the following tax year.

The report said that she could pay AVC's to give her the maximum available tax free cash at retirement. The figure was arrived at as the amount required each month from 2017 until her retirement (expected to be in 2018) based on projected benefits at her normal retirement date and an assumed growth rate to maximise the 100% Pension Commencement Lump Sum (PCLS) benefit then available from her employers pension scheme. While it was concluded she couldn't totally maximise the lump sum it concluded that she could gain some benefit.

In effect this meant she didn't need to reduce her valuable pension to get more tax-free cash lump sum. Based on this she started to contribute around £300 per month from April 2017.

The report said that

When you come to draw benefits from your defined benefit scheme, <u>the value of your AVC can be used towards providing a tax-free lump sum</u>. <u>This avoids the need to commute your valuable secure income from your defined benefit scheme in order to take advantage of your tax free PCLS,</u> this effectively means that the AVC value can receive tax relief on entry and be withdrawn potentially tax free.

Based on what was said in the report I thought the impact of the AVC contributions in affecting her tax-free lump sum was clear and intended as that is what the report says (see above underlined section).

However it also seems that Mrs M contributed for longer than was anticipated at the time and this may also have had an impact on the final result.

It seemed that at the time of the original advice the objective was to maximise lump sum without affecting the amount of pension, which is what actually happened (see below).

Further at the time of the advice Skipton could not have known that Mrs M would continue to work as long as she did and continue to contribute to the AVC for longer than initially anticipated and resulted in a much higher lump sum from the AVC than was anticipated at the time of the advice. So I didn't think Skipton was responsible for that outcome as there was a subsequent change in circumstances after the advice was given.

What has happened?

Five years later Mrs M had an AVC worth around £30,000 which was taken as a lump sum entirely tax free. That sum had benefitted from tax free growth and tax relief on contributions both of which increased the amount invested.

Mrs M had not lost the money invested in the AVC and it had increased. Due to the interaction with her employer's pension she had in effect been able to make tax free contributions, benefit from tax free growth and take all of the AVC money saved as a tax-free lump sum. That was more than was anticipated in the original advice and was what the report anticipated when it said ' *she could take the money 'potentially tax free'*. Typically only 25% of the AVC would have been paid tax free with the rest subject to tax.

However Mrs M felt the AVC simply replaced the tax-free cash lump sum she would have got from her scheme and she then got a higher pension. She says this effectively added to a pension she did not want to increase. It gave her higher income on which she was paying tax. The initial report made clear that she and her husband felt they already had enough pension income. She says she could have saved £25,000 and got a lump sum from her employer's pension, so she had lost her employer's pension lump sum.

I do understand what she is saying. But I still thought the report was clear what the AVC was designed to achieve. The amount of lump sum was much higher than anticipated at the time of the report due to the additional years of contributions that could not be anticipated by Skipton at the time.

The report considered a number of options' and strongly recommended Mr and Mrs M use their ISA allowance for that year which had not been used as yet. It did not seem that Mrs M opted to do that so it seems she still decided to contribute to the AVC in addition to setting up the other pension to receive the lump sum of around £12,000.

The advice said the following - AVC

You have access to an AVC via (provider name). We established that you could contribute to this to give you access to the maximum available tax free PCLS once you reach retirement.

As such you contacted (Provider name) and are going to contribute £300.11 per month from April 2017, the effect will be a reduction of £204 to your take home pay per month to this scheme through salary sacrifice (this has been calculated by our technical department). You have confirmed this is affordable to you and will action this point yourself through your employer to start in April (the new tax year). This figure was arrived at as it is the figure required each month from now until your retirement, based on your projected benefits at your normal retirement date and an assumed growth rate, in order to maximise the 100% Pension Commencement lump sum benefit currently available with the (employers pension scheme) AVC.

When you come to draw benefits from your defined benefit scheme, the value of your AVC can be used towards providing a tax-free lump sum. This avoids the need to commute your valuable secure income from your defined benefit scheme in order to take advantage of your tax free PCLS, this effectively means that the AVC value can receive tax relief on entry and *be withdrawn potentially tax free.*

We discounted additional lump sum contributions to your AVC plan because we established that it is not possible to make lump sum contributions to this scheme. As such I have discounted investing any further monies here due to no other benefits being available. As the AVC contribution will not start until the new tax year due to the timing of this investment it still leaves your full amount of Net relevant earnings to invest for this tax year.

So for all those reasons I thought the Skipton was clear how the AVC benefits would be taken at that time. It also explained the tax treatment and the interaction with her employers pension scheme defined benefit pension.

Mrs M has said she was not favouring the income option and she was quite clear about this - She did not want to add to her pension.

I noted what she said but didn't agree. It was clear from the extract of the report above that the Skipton did understand the interaction with her employer's pension scheme benefits and this was expressly stated in the report.

Communication at the date of actual retirement.

I could see that Mrs M did contact Skipton before she took her pension and it emailed her in early October 2022 and said.

1*. You have built a pot with your employer as per our advice and this pot in isolation can be taken as tax free cash, however if you take the maximum lump sum option from your main scheme the amount of tax-free cash is reduced as you can only take 25% tax free of your total pension pot of money.*

2. If you are not favouring taking the income option and want to take the maximum as a lump sum you can from your pension pots of money you could take your main scheme maximum lump sum option and then transfer the AVC over to another scheme where you can take the amounts as ad hoc withdrawals to fund your retirement that way. However if you transfer out of your AVC scheme through work you will still only be able to take 25% tax free from your AVC then and the rest will be taxed at your marginal rate.

This email raised the option of transferring the pension into a separate scheme. Mrs M would have needed to transfer the AVC into a separate pension before taking her pension and lump sum from the main scheme. Had she done so she could have had a separate pension and left her main employers pension unaffected by the AVC and taken the full lump sum and reduced pension from her employers scheme and still had a separate AVC pension. She could later have taken up to 25% of the AVC pension tax free with the rest as taxable income.

Mrs M said she emailed back and said '*After your holiday would you explain the end of part 2 -don't understand that bit'*. But she said the adviser did not make contact to explain this.

Skipton say it tried to follow up but its clear it didn't succeed. I thought that if it failed to make contact by phone it could have written or emailed. While Skipton might reasonably have expected to be paid for further advice at this time it never had that discussion as it didn't succeed in making contact.

Mrs M then went ahead without seeking their help or exploring whether she wanted to pay for further advice. So I think Skipton failed to provide a good standard of customer care. I thought it therefore failed to conduct its business with due skill care and diligence.

However Mrs M could still have chased Skipton further or asked for other help for example from Pension Wise.

I said that because her employer's pension scheme says the following about taking the AVC

"*Because it is such an important decision, your local pension fund is not allowed to proceed with your application to take AVCs until you tell them you have either received guidance from Pension Wise or you do not wish to take it. This is a legal requirement*."

So it was clear she would have been signposted to Pension Wise at that time. Mrs M said she did not speak to Pension Wise when she retired as she said she didn't trust financial advisers anymore. It's a pity that she didn't make contact, as they are not financial advisers but an independent free information and guidance service who could have assisted her in understanding her options, but would not have made any personal recommendations.

So it seemed that both Mrs M and Skipton are partly responsible for her not exploring the option to transfer her AVC before taking her employer's pension.

But even if she had explored this, I didn't think it would have made a difference. I said that because when I asked her about this option she rejected the suggestion saying she didn't want '*another separate pension'*. So it seems unlikely she would have taken up this option at the time and the lack of a reply from Skipton wouldn't have made a difference.

Other issues

Referring to the employers pension as a salary sacrifice scheme.

Mrs M said that Skipton referred to a salary sacrifice scheme. This would have meant the contributions were deducted before income tax and national insurance was deducted. I noted she said that due to age she doesn't pay National Insurance, but she confirmed at the time of the advice that she was paying National Insurance.

While saying this was a salary sacrifice scheme was not correct, I didn't think it made any difference to the advice. I said that because it reflected the fact the contributions would be deducted from her pay before tax so that she did not need to make a separate claim for the tax and it didn't make a difference to the overall advice whether it was a salary sacrifice scheme or not.

I did however think this error had contributed to her poor impression of Skipton. She said she felt this showed their total incompetence.

Summary

So in summary, while I did understand Mrs M's frustration, I thought:

1. the original advice both in relation to the separate pension and the AVC did explain the tax impact of each and the AVC explained the interaction with the main scheme benefits.

2. I think Skipton failed to provide a good standard of customer care as it didn't respond to her query at the time of retirement. As I had concluded that Skipton did something wrong I could consider an award for financial loss and distress and inconvenience arising from that failure.

  a. Financial loss – an award for financial loss was intended to put Mrs M back in the position that she would have been in but for the errors. I didn't think the reference to salary sacrifice made a difference to the advice for the reasons given above. I also didn't think the failure to reply to her at retirement caused a financial loss because she didn't want another separate pension. So it didn't seem that it would have made a difference to what she did. So I didn't think there was a financial loss for those reasons.

b. Distress and inconvenience – An award for distress and inconvenience was intended to reflect the impact of those errors on Mrs M and not to punish Skipton.

I could see that the lack of reply from Skipton when she came to retire and the errors in past papers (referring to salary sacrifice) would have been frustrating for Mrs M.

I could also see that Mrs M was very upset, but much of what she complained about was explained at the time (as explained above). I thought the impact of the failure to reply and referring to salary sacrifice were not the major cause of her upset which seem instead to relate to her perceived loss of the tax-free cash and a higher pension than she says she wanted. I said that because she had commented in detail on this. I am not considering either of these things in this award as I have concluded they were explained at the time of the advice.

On balance having reflected on all the evidence I thought an award of £250 was fair and reasonable for the failure to make contact at the time of retirement and the reference to salary sacrifice.

I proposed to uphold this complaint in part and direct Skipton Building Society pay Mrs M £250 for distress and inconvenience.

Responses to my Provisional decision

Skipton said:-

- The reference to the name of another provider for the AVC was an error and seemed to appear only once in the suitability report.
- It was clear and upfront about the benefits of the AVC and the report explained the benefits.
- It provided advice on the lump sum pension in 2022. The scope of the advice was limited to that pension. Mrs M wanted to make sure the pension remained suitable in terms of cost, risk and performance and Mrs M's husband's pension with his employer. These were the terms set out when first meeting in late 2021.
- When the adviser gave further advice on the lump sum pension in 2021 there was no reason to discuss the AVC, it wasn't managed by Skipton and it didn't think it was reasonable for the adviser to have asked about it.

Mrs M commented at length and I have responded to her comments separately. In summary Mrs M said

- She had not been told '*you must withdraw from paying into the scheme in 2018'*. She didn't think the report was clear. This information was not discussed at any of the meetings.
- She questioned why when she took further advice in 2021 she wasn't asked why she was continuing to invest in her AVC.

- The AVC paragraph was not explained properly and in fact describes the wrong scheme. Basically the report read that the AVC would be tax free on entry and withdrawn tax free. Her employers pension scheme said the section in the report didn't correspond with their AVC scheme. It was strange to open an AVC for a short period of time!

- Whatever she paid into the AVC scheme she could only ever receive 25% tax free of her whole pension pot (AVC and Pension added together).

- There was no tax uplift for her AVC contributions, the contributions to the AVC were paid before tax was deducted.

- She was told 'the AVC was 'IN ISOLATION' to her pension and was tax free.'

- I said that 'At the time of the advice there were 21 months until Mrs M was due to retire in late 2018'. She said this was incorrect - Skipton didn't even research the date she could retire if she chose to do so. They didn't ask if she actually planned to take her State Pension – again poor service.

- 'Had she set up a separate defined contribution pension only 25% would have been tax free'. There were no additional benefits with her employers AVC. No tax uplift.

- Skipton said her AVC was Salary Sacrifice and it wasn't. It referred to the wrong scheme and didn't understand how it worked.

- She took the higher pension at retirement because she had worked an extra year and taken the lump sum pension. As she didn't have the lump sum pension to fall back on at 75 years she decided to take the higher pension. None of this would be applicable if the AVC had been explained properly and the technical department had described the correct scheme because she would have declined to invest.

- The report said 'Mrs M and her husband said they already had sufficient information pension income to cover their needs and wants for income in retirement, 'so why had she ended with more income after paying to see a professional financial advisor?'

- The branch manager did indeed speak to her husband and it did entice him to speak to a financial advisor at Skipton. The adviser told her that with her state pension and small pension by the time she was 75 years she could maybe take the lump sum pension as a pension and avoid tax as the personal allowance would have increased significantly by this time.

- She did not continue working longer than anticipated as she planned to work beyond 67 years as in the report.

- My decision said *'It seems that at the time of the original advice the objective was to maximise lump sum without affecting the amount of pension, which is what actually happened'*. But that hadn't happened as it did affect her pension. She couldn't take her employers lump sum.

- Skipton knew she planned to work until she was at least 67 years.

- She did take her AVC tax free but she lost her lump sum through incompetence from Skipton's employees.

- She said she could have saved £25,000 in an ISA, had a lump sum and a small pension. This is what she wanted. The original report confirms this!

- She did use her ISA allowance in 2017 with a different provider; much better interest rate.

- Mrs M confirmed that the AVC annuity income of £1,4000 to £1,700 was the whole of her AVC and did not include a tax-free lump sum.

- The AVC was not in her best interests. With her employers pension she would have received the same benefits without the risk of losing the capital.

- She did apply for figures from the AVC provider but the benefits were very poor in comparison to the benefits from her employers pension and her husband would receive a pension upon her death. So recommending an AVC was not/never in her best interest.

- To be very clear the adviser DID NOT try to contact her in October 2022.Generally they would arrange phone calls via emails. He did not ring her as promised. She was very upset as she trusted him. She did not understand pensions and it left her very upset not knowing what to do. He did not explain the AVC properly. His verbal explanation was not what was in the report and she thought the report corresponded with what he verbally told her. She didn't remember ever saying she preferred a phone call and at the time they were sending messages/emails. He could have emailed her to say I have returned from holiday please ring me.

- In my provisional decision I had already considered the reference to the wrong scheme insurer and the reference to salary sacrifice. I concluded that neither made a difference to the outcome of the advice.

She said she will never go to see another financial advisor. The AVC was savings that she had planned to use for house renovations. She did not want another pension. She wanted the funds. Because of Skipton's poor standard of care She didn't have the confidence or inclination to speak to anyone involved in pensions. So did not ring Pension Wise. She wanted the ISA, lump sum and small pension. She did not want another pension. She already had a small pension with another employer and ISA savings

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I have considered what Mrs M has said but most of her points repeat those made and considered in my provisional decision, so I have not repeated what I have said.

In addition I would note that

- While she suggests Skipton was aware she planned to work to age 67, she actually worked until age 69 which is longer than anticipated at the time.

- Contrary to Mrs M's comments the original financial advice did make references to her state pension age and considered this and the date of her retirement from her employers pension scheme.

- Mrs M says that the AVC benefits were very poor in comparison to the benefits from her employers pension and her husband would receive a pension upon her death. So recommending an AVC was not/never in her best interest. But I don't agree. In reality making AVC's had exactly that beneficial effect as it resulted in Mrs M receiving more pension from her employers pension scheme which would in turn have had benefits for her husband if she pre-deceased him.

- I have seen the AVC information provided to Mrs M. She confirmed this was sent to her by her employer's pension scheme and not direct from the insurer that managed the AVC investment. It includes a letter and guide sent by the insurer that was in turn sent on to Mrs M. It is clear the flexible retirement option was not available through her employers pension scheme. But the guide signposts her to free information services and says

  Use your pension pot to provide a flexible retirement income

  You can move all or some of your pension pot to a flexible retirement income product known as pension drawdown. The income normally isn't guaranteed but you have flexibility over the amount you can draw and how often.

  As I explained in my provisional decision it seems it would have been possible for Mrs M to transfer her AVC into another pension before taking her pension from her employers scheme. She could then have taken her AVC money in a more flexible manner at a time she preferred and without impacting her employers lump sum.

  In my provisional decision I concluded however that Mrs M had said she didn't want another separate pension and didn't take advice. So while this option was available and signposted to her I didn't think she would have taken it. So the fact the adviser did not return her call would not on balance have made a difference to her decision.

- I note that Mrs M is adamant that the adviser did not get back to her when she made contact in late 2022. Skipton confirms it did not make successful contact so this supports what Mrs M says and I have no reason to doubt her statement. As I said in my provisional decision I thought the Skipton could have followed up by email or letter but it didn't do so. However for the reasons given above I didn't think it would have made a difference and I considered that failure to make contact in my proposed award for distress and inconvenience.

- I have seen the advice given to Mrs M in 2021/22 regarding her lump sum pension investment. It is clear the advice to her was only about that and her AVC was not reviewed. The advice was to change her underlying investments. So I would not have expected her continued AVC contributions to be discussed or further advice provided.

I remain of the view that the original report did explain how the AVC would impact her defined benefit pension. For all the reasons given there is no financial loss and I remain of the view that an award of £250 would be fair and reasonable in the circumstances.

Putting things right

The Skipton should pay Mrs M £250 for distress and inconvenience.

My final decision

I uphold this complaint in part and direct Skipton Building Society must within 30 days of this service notifying it that Mrs M has accepted my decision, pay Mrs M £250 for distress and inconvenience as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 29 March 2024.

Colette Bewley
Ombudsman